APPEAL NO. 022818
FILED DECEMBER 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). By our opinion in Texas Workers' Compensation Commission Appeal No. 021910, decided September 16, 2002, we remanded this case involving supplemental income benefits (SIBs) for the hearing officer to make specific findings of fact regarding the elements in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) relating to the evidence admitted at the contested case hearing, and to specifically identify the narrative which specifically explains how the injury causes a total inability to work. On October 9, 2002, without a further hearing, the hearing officer provided a decision and order with such findings of fact, which again found the appellant (claimant) is not entitled to SIBs for the first quarter and that the claimant is entitled to SIBs for the second quarter. The claimant appeals the determination that he is not entitled to SIBs for the first quarter, arguing that the determination is against the great weight and preponderance of the evidence. The appeal file does not contain a response from the respondent (carrier). The determination regarding SIBs entitlement for the second quarter was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The good faith criteria of Section 408.142(a)(4) and Rule 130.102(b)(2) is in dispute. The claimant claimed that he had no ability to work as a result of his compensable injury during the qualifying periods for the first and second quarters. The qualifying period for the first quarter was from July 29 through October 27, 2001.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer found that medical documentation from Dr. H in January and February of 1999, from Dr. B in January of 2001, Dr. M in May of 2001, and from Dr. H in May of 2001 were records that were persuasive in proving that the claimant had some ability to work during the qualifying period of the first quarter of SIBs and that there was not a narrative report that was dated within a reasonable time of the qualifying period of the first quarter, from a doctor that specifically explained how the claimant's injury caused a total inability to work. The claimant argues that it is manifestly unjust for the doctor's narrative to be found probative for the second quarter

but too remote in time for the first quarter. The claimant additionally argues that there are no records showing that the claimant has an ability to work. We have previously held that there is no condition in Rule 130.102(d)(4) that limits the "other records," as to time of inception, to those created during the qualifying period for the quarters in issue. Texas Workers' Compensation Commission Appeal No. 992197, decided November 18, 1999. The credibility to be given to the record is the province of the hearing officer as the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a).

It is the hearing officer, who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL, CLAIMS MANAGER ZURICH U.S.
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

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Margaret L. Turner
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Thomas A. Knapp
Appeals Judge